

IN THE UNITED STATES COURT OF FEDERAL CLAIMS
Bid Protest

WORKHORSE GROUP INC.,)	
)	
Plaintiff,)	Case No. 21-1484C
)	
v.)	Judge Zachary N. Somers
)	
THE UNITED STATES,)	
)	
Defendant)	
)	
and)	
)	
OSHKOSH DEFENSE, LLC,)	
)	
Defendant-Intervenor.)	
)	

PLAINTIFF’S MOTION FOR EXTENDED BRIEFING

Plaintiff, Workhorse Group (“Workhorse”), respectfully requests that the Court issue an order directing Workhorse and the Government to fully brief the merits of Workhorse’s contention that the United States Postal Service’s administrative review scheme violates the Appointments Clause of the Constitution. *See* Pl. Opp’n at 23–24, ECF No. 38.

In an unopposed motion filed on July 26, 2021, the Government requested a 7-day enlargement of time to file its reply in support of its motion to dismiss, so that it could “adequately respond to plaintiff’s Appointments Clause argument.” ECF No. 39. Workhorse did not oppose

the Government's request based on its understanding that the additional time requested was to allow the Government sufficient time to address the merits of the Appointments Clause argument.¹

In its reply to Workhorse's opposition to the motion to dismiss, however, the Government argued "the lack of an adequate opportunity to fully address this issue." R. to Opp'n to Mots. to Dismiss at 17, ECF No. 42. The Government's reply contends only that Workhorse "forfeited" its Appointment Clause argument and that "two weeks is not a sufficient time to consider an issue as nuanced as this one." *Id.* Although the Government argues that it does not "believe" that a substantive response is necessary because of its forfeiture contentions, it nonetheless requests an additional 30 days "to prepare a comprehensive response" if the Court desires to consider the merits of the Appointments Clause issue. *Id.* at 18 n.7.

Workhorse respectfully submits that given the significance of the constitutionality of the Postal Service's administrative review scheme to this action, it is important that the issue be fully briefed, and that Workhorse also be allowed to address the Government's argument that Workhorse "forfeited" its position regarding the Appointments Clause, made for the first time in the Government's reply brief.²

Accordingly, Workhorse respectfully requests that the Court issue an order directing the Government to fully respond within 30 days to Workhorse's contention that the Postal Service's administrative scheme violates the Appointments Clause. Workhorse further requests that the Court provide Workhorse 14 days from the date of the Government's filing to reply.

¹ After it requested a similar 7-day enlargement of time to respond, Defendant-intervenor presented its merits-based position on the Appointments Clause issue and did not request any further briefing with respect to that issue.

² Undersigned counsel understands that the Court is considering scheduling oral argument on the Government's and defendant-intervenor's motions to dismiss in early September, and respectfully submits that a later date, following completion of the further briefing requested herein, is supported by good cause for the reasons set forth in this motion.

Counsel for Workhorse advised counsel for Defendant and Defendant-Intervenor that Workhorse intended to file this motion. Counsel for the Government advised that the Government would oppose this motion. As of the time of this filing, counsel for Defendant-Intervenor has not indicated its position.

CONCLUSION

For these reasons, we respectfully request that the Court (1) order the Government to fully brief within 30 days its position on whether the Postal Service's administrative scheme violates the Appointments Clause; and (2) order Workhorse to reply to the Government's brief within 14 days of its filing.

Dated: August 12, 2021

Respectfully submitted,

/s/ Thomas P. McLish

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